

## § 6.22

Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

*Enter or Entry.* To make or making entry for consumption, or withdrawal from warehouse for consumption in accordance with Customs regulations and procedures.

*Harmonized Tariff Schedule or HTS.* The Harmonized Tariff Schedule of the United States.

*Licensee.* A person to whom a license has been issued under this subpart.

*Licensing Authority.* Any officer or employee of the U.S. Department of Agriculture designated to act in this position by the Director of the Division charged with managing the Dairy Tariff-Rate Import Quota Licensing System, currently the Import Policies and Programs Division of the Foreign Agricultural Service.

*Other countries.* Countries not listed by name as having separate tariff-rate quota allocations for an article in the Additional U.S. Notes to Chapter 4 of the Harmonized Tariff Schedule.

*Person.* An individual, firm, corporation, partnership, association, trust, estate or other legal entity.

*Postmark.* The postage cancellation mark or date applied by the United States Postal Service. This does not include the date on metered postage affixed by the applicant, or on mail delivered by private entities.

*Process or Processing.* Any additional preparation of a dairy product, such as melting, grating, shredding, cutting and wrapping, or blending with any additional ingredient.

*Quota year.* The 12-month period beginning on January 1 of a given year.

*Tariff-rate quota amount or TRQ amount.* The amount of an article subject to the applicable in-quota rate of duty established under a tariff-rate quota.

*United States.* The customs territory of the United States, which is limited to the 50 states, the District of Columbia, and Puerto Rico.

[61 FR 53007, Oct. 9, 1996, as amended at 65 FR 1298, Jan. 10, 2000]

## § 6.22 Requirement for a license.

(a) *General rule.* A person who seeks to enter, or cause to be entered, an article shall obtain a license, in accord-

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ance with this subpart, except as provided in paragraph (b).

(b) *Exceptions.* Licenses are not required if:

(1) The article is imported by or for the account of any agency of the U.S. Government;

(2) The article is imported for the personal use of the importer, provided that the net weight does not exceed five kilograms in any one shipment;

(3) The article imported will not enter the commerce of the United States and is imported as a sample for taking orders, for exhibition, for display or sampling at a trade fair, for research, for testing of equipment; or for use by embassies of foreign governments. Written approval of the Licensing Authority shall be obtained prior to entry, and the importer of record (or a broker or agent acting on its behalf) shall provide to the Licensing Authority, prior to the release of such articles, the appropriate Customs documentation identifying the article, quantity to be imported, its location, intended use, an entry number and the importer of record. The Licensing Authority may also require as a condition of import that the article be destroyed or re-exported after such use; or

(4) Such person pays the applicable over-quota rate of duty.

## § 6.23 Eligibility to apply for a license.

(a) *In general.* To apply for any license, a person shall have:

(1) A business office, and be doing business, in the United States, and

(2) An agent in the United States for service of process.

(b) *Eligibility for the 1997 and subsequent quota years—*(1) *Historical licenses (Appendix 1).* Any person issued a historical or nonhistorical license for the 1996 quota year for an article may apply for a historical license (Appendix 1) for the same article from the same country for the 1997 and subsequent quota years, if such person was, during the 12-month period ending August 31 prior to the quota year, either:

(i) Where the article is cheese or cheese product,

(A) The owner of and importer of record for at least three separate commercial entries of cheese or cheese products totaling not less than 57,000

kilograms net weight, each of the three entries not less than 2,000 kilograms net weight,

(B) The owner of and importer of record for at least eight separate commercial entries of cheese or cheese products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period; or

(C) The owner or operator of a plant listed in Section II or listed in Section I as a processor of cheese of the most current issue of "Dairy Plants Surveyed and Approved for USDA Grading Service" and had processed or packaged at least 450,000 kilograms of cheese or cheese products in its own plant in the United States; or

(ii) Where the article is not cheese or cheese product,

(A) The owner of and importer of record for at least three separate commercial entries of dairy products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight;

(B) The owner of and importer of record for at least eight separate commercial entries of dairy products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period;

(C) The owner or operator of a plant listed in the most current issue of "Dairy Plants Surveyed and Approved for USDA Grading Service" and had manufactured, processed or packaged at least 450,000 kilograms of dairy products in its own plant in the United States; or

(D) The exporter of dairy products in the quantities and number of shipments required under (A) or (B) above.

(2) *Certain butter.* A person issued a nonhistorical license for butter for the 1997 or 1998 quota year may annually apply for a historical license (Appendix 1) for the same quantity of butter for the subsequent quota year and each year thereafter, provided that such person has used at least 90 percent of the

original license issued for the previous quota year and meets the requirements of paragraph (b)(1)(ii). However, if a person is issued a historical license pursuant to this paragraph, that person may not be issued a nonhistorical license for butter for any quota year in which that historical license is issued to that person, unless applicants who do not hold such a license have all been issued such a nonhistorical license.

(3) *Nonhistorical licenses for cheese or cheese products (Appendix 2).* A person may annually apply for a nonhistorical license for cheese or cheese products (Appendix 2) for the 1997 quota year and each quota year thereafter if such person meets the requirements of paragraph (b)(1)(i) of this section.

(4) *Nonhistorical licenses for articles other than cheese or cheese products (Appendix 2).* A person may annually apply for a nonhistorical license for articles other than cheese or cheese products (Appendix 2) for the 1997 quota year and each quota year thereafter if such person meets the requirements of paragraph (b)(1)(ii).

(5) *Designated license (Appendix 3).* A person may annually apply for a designated license (Appendix 3) for the 1997 quota year and for each quota year thereafter, provided that such person meets the requirements of paragraph (b)(1)(i), of this section and provided further that the government of the country has designated such person for such license. The designating country shall submit its selection of designated importers in writing directly to the Licensing Authority not later than October 31 prior to the beginning of the quota year.

(c) *Exceptions.* (1) A licensee that fails in a quota year to enter at least 85 percent of the amount of an article permitted under a license, shall not be eligible to receive a license for the same article from the same country for the next quota year. For the purpose of this paragraph, the amount of an article permitted under the license will exclude any amounts surrendered pursuant to § 6.26(a), but will include any additional allocations received pursuant to § 6.26(b).

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(2) Paragraph (c)(1) of this section will not apply where the licensee demonstrates to the satisfaction of the Licensing Authority that the failure resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the article, act of God or *force majeure*.

(3) Paragraph (c)(1) of this section may not apply in the case of historical or nonhistorical licenses, where the licensee demonstrates to the satisfaction of the Licensing Authority that the country specified on the license maintains or permits an export monopoly to control the dairy articles concerned and the licensee petitions the Licensing Authority to waive this requirement. The licensee shall submit evidence that the country maintains an export monopoly as defined in this paragraph. For the purposes of this paragraph "export monopoly" means a privilege vested in one or more persons consisting of the exclusive right to carry on the exportation of any article of dairy products from a country to the United States.

(4) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a non-historical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a non-historical license for butter to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a historical butter license of 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed affiliated with another applicant if:

(i) The applicant is the spouse, brother, sister, parent, child or grandchild of such other applicant;

(ii) The applicant is the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant;

(iii) The applicant is owned or controlled by the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant.

(iv) Both applicants are 5 percent or more owned or directly or indirectly controlled, by the same person;

(v) The applicant, or a person who owns or controls the applicant, benefits from a trust that controls such other applicant.

(5) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a nonhistorical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a non-historical license for butter to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a historical butter license for 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed associated with another applicant if:

(i) The applicant is an employee of, or is controlled by an employee of, such other applicant;

(ii) The applicant manages or is managed by such other applicant, or economically benefits, directly or indirectly, from the use of the license issued to such other applicant.

(6) The Licensing Authority will not issue a nonhistorical license for an article from a country, for which the applicant receives a designated license.

## § 6.24 Application for a license.

(a) Application for license shall be made on either paper or electronic forms, provided or designated by the Licensing Authority, and shall be submitted in accordance with § 6.36(b). All parts of the application shall be completed. The application, if mailed, shall be postmarked no earlier than September 1 and no later than midnight October 15 of the year preceding that for which license application is made. The application, if submitted electronically, shall be transmitted no earlier than September 1 and no later than midnight October 15 of the year preceding that for which license application is made. The Licensing Authority will not accept incomplete applications or unpostmarked mailed applications.

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